

THE STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL  
SERVICES WATER COUNCIL

Town of Nottingham Selectmen Appeal  
Docket No. 04-15 WC

RECEIVED

AUG 09 2004

MOTION TO DISMISS MISPLACED APPEAL

USA Springs, Inc., by and through its attorney, Hyatt & Flynn, as the applicant and grantee of the large groundwater withdrawal permit which is the subject of the above-captioned appeal, respectfully requests that the Water Council dismiss such appeal. In support of this Motion, USA Springs, Inc. states as follows:

1. The aforementioned large groundwater withdrawal permit was duly issued to USA Springs, Inc. by New Hampshire's Department of Environmental Services ("NH DES") pursuant to RSA ch. 485-C.

2. RSA 485-C:21, VI provides the only lawful means to appeal a decision which has been issued by NH DES under the large groundwater withdrawal permit statute, wherein it specifically requires that *"rehearings and appeals...be in accordance with RSA 541"*.

3. Such governing statute, RSA 541, requires that a **Motion for Rehearing** be filed with NH DES ( at RSA 541:3 ) and that an **appeal after a decision** on the **Motion for Rehearing** can only be filed with the **New Hampshire Supreme Court** ( at RSA 541:6 ).

4. Regarding the same underlying subject matter as in the above-captioned, the Town of Nottingham has filed a Motion for Rehearing with NH DES, which has not yet ruled on that Motion. Thus, any appeal, in general, before a decision on the Motion for Rehearing is premature.

5. In particular, even if NH DES rules against the Town of Nottingham on the Town's Motion for Rehearing, the proper venue for an appeal would be directly to the New Hampshire Supreme Court, as aforementioned ( i.e. per RSA 541:6 ).

6. Such statutory procedural requirements which mandate that all appeals of large groundwater withdrawal permits must be filed directly with the New Hampshire Supreme Court are statutorily expressed in clear, unambiguous and non-discretionary language.

7. The unambiguous legislative prodedural path for appeals of the nature sought in this case make it clear that the Water Council does not have jurisdiction to hear the instant appeal as filed by the Town of Nottingham.

WHEREFORE, for the reasons as stated above, USA Springs, Inc. respectfully requests that the Water Council dismiss the above referenced appeal.

Dated: August 6, 2004

RESPECTFULLY SUBMITTED

USA Springs, Inc.  
By its Attorney:

**COPY**  
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CERTIFICATION

I certify that a copy of this Motion has been forwarded via first class mail, postage prepaid, to all parties listed in the cc list on the accompanying cover letter, this 6<sup>th</sup> day of August, 2004.

**COPY**  
Armand M. Hyatt